IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946.

No. 1253

In the Matter of V-I-D, INC., Debtor.

MARGUERITE S. GLOVER,
Petitioner,

vs.

McM. COFFING, Trustee in Bankruptcy, V-I-D, INC., Debtor,

LAWRENCE H. PRYBYLSKI, as Intervening Trustee, and

CHARLES J. KRAMER, Intervener,
Respondents.

REPLY BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

OWEN W. CRUMPACKER,
JAY E. DARLINGTON,
306 Hammond Bldg.,
Hammond, Indiana,
Attorneys for Petitioner.

Midwest Law Printing Co., 340 W. Huron St., Chicago

INDEX.

PAGE

Summary 1

Argument 3

I.

Both decisions below are based on the proposition that the state court's foreclosure judgment is "void", —not that it was "vacated", as Respondents attempt to imply. The vacation was not in favor of the owner, Hoover, but only in favor of two other defendants, mortgagees, who were served by publication. It has nothing to do with the judgment against the owner, Hoover, who was not served by publication but by summons 3

A-B-C.

Identity of the judgment defendant in a foreclosure case cannot be collaterally attacked by substituting a stranger of like name in place of the land owner. This is the worst and most dangerous form of collateral attack which a federal court can make on a state court's judgment 6

TABLE OF CASES.

Aultman, Miller & Co. (1883), 93 Ind. 158, 159, 160.... 7

Michener v. Bengel, (1893), 135 Ind. 188, 194 bottom, 45 N. E. 664 5

Mode v. Beasley (1895), 143 Ind. 306, 333..... 7

Schofield v. Jennings, Admr., (1879), 68 Ind. 232, 235 7

Wright v. Churchman (1893), 135 Ind. 683, 685, 686, top, 35 N. E. 835 5

Sec. 2-2601 et seq., Burns Ins. Sts. 1933..... 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946.

No. 1253

In the Matter of V-I-D, INC., Debtor.

MARGUERITE S. GLOVER,
Petitioner,

vs.

McM. COFFING, Trustee in Bankruptcy, V-I-D, INC., Debtor,

LAWRENCE H. PRYBYLSKI, as Intervening Trustee, and

CHARLES J. KRAMER, Intervener,
Respondents.

REPLY BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

SUMMARY.

I.

Both decisions below are based squarely and solely on the proposition that the state court's foreclosure judgment is "void,"—not that it was "vacated" (R. 133-134. R. 184-185, Petition, 34-35).

Respondents' misleading references to the vacation and opening up of the state court's judgment, relate to something done by two of Hoover's *co-defendants* who were mortgagees of the property and who were served by *publication.* This has nothing to do with the judgment rendered against the fee owner Hoover based on service of *summons,* and the decisions below are not based on any such ground.

A-B-C

Respondents do not deny the Indiana decisions holding that a judgment cannot be collaterally attacked in a different court for defects not appearing on the face of the judgment record, but they seek to evade the rule and accomplish the same thing indirectly by arguing the fallacy that the other court can entertain a collateral attack on the *identity* of the judgment defendant,—can take an apparently valid foreclosure decree against the *owner* of land and declare that it is only a judgment against a *stranger* of like name who never had any interest in the land, and declare the judgment "void" as to the owner,—*thereby destroying all value* of the judgment and destroying the real estate *title* based thereon.

The identity of a land *owner* in a foreclosure judgment, and its binding effect upon *him,* is the heart and soul of the judgment. Such an attack is the worst and most dangerous kind of collateral attack which the federal court could make on a state court's judgment.

ARGUMENT.

Certain misleading errors in Respondents' brief require correction:

I.

Decisions Below are that the State Court's Judgment is "Void,"—Not That it has Been "Vacated."

Both decisions below are based squarely and solely on the proposition that the District Court has power to declare the state court's foreclosure judgment "void" on account of an alleged latent defect in the state court's jurisdiction over the person of the fee owner Hoover (R. 133-134. R. 184-185, Petition, 34-35).

The decisions below are not predicated on the ground that the state court "vacated" its own judgment, as Respondents' brief misleadingly implies.

The so-called vacation or opening up of the state court's judgment was a statutory form of relief sought by, and granted to, two of Hoover's *co-defendants* who held a mortgage on Hoover's land, and who were served only by *publication*. This had nothing to do with the judgment against Hoover, the fee owner, who was not served by publication but by *summons*.

The Circuit Court of Appeals' decision is predicated squarely and solely on the proposition that:

> "Insofar as the grantor Hoover is concerned, the judgment in the (state) Superior Court was *void* and *hence* the proceedings in the (federal) district court *were proper* and are binding upon the intervenor" (petitioner here). (Our emphasis).
>
> R. 185, end of opinion, copied in our Petition for Certiorari, page 35.

In other words, that federal District Court could strike down the state court's judgment against the fee owner Hoover for an alleged latent defect in its jurisdiction over him, based upon extraneous evidence which the District Court received outside the state court's record.

The Circuit Court of Appeals' opinion merely refers to the vacation or opening up procured by Hoover's co-defendants, mortgagees, by way of reciting the *history* of the litigation. Its decision is not *predicated* thereon.

R. 182, bottom, Petition, 32 bottom.

The District Court likewise predicated its opinion entirely on the ground that the state court's judgment against Hoover was void (R. 132-134). The District Court's decree says, not that the judgment had been vacated or opened up as to Hoover, but that it is "void" as to his grantee, the debtor corporation (R. 136, par. 3).

The so-called vacation or opening up obtained by Hoover's two co-defendants, mortgagees, was obtained solely by virtue of the following Indiana statute:

> "Parties against *whom* a judgment has been rendered without other notice than the *publication* in a newspaper as herein required, except in cases of divorce, may, at any time within five (5) years after the rendition of the judgment, have the same opened, and be allowed to defend." (Our emphasis).
>
> Sec. 2-2601, *et seq.*, Burns Ind. Sts. 1933.

The above statutory relief was, by its terms, available *only* to those "parties against whom" the judgment had been rendered by *publication* of notice, and was not for the benefit of defendants personally served with *summons*, such as the fee owner Hoover. No publication of notice was made to him but the judgment against him rested upon the service of summons (R. 87, 88).

These co-defendant mortgagees petitioned for this statutory relief in the state court *only for* themselves (R. 93 bottom) and the state court granted this relief *only to* them, which was all the state court could do under the above statute (R. 96, top).

The law is settled by Indiana Supreme Court decisions that where certain defendants obtain a vacation or opening up of such a judgment as to them, this does not vacate or open up the judgment as to *other* defendants.

Wright v. *Churchman* (1893), 135 Ind. 683, 685, 686, top, 35 N. E. 835

Michener v. *Bengel,* (1893), 135 Ind. 188, 194 bottom, 45 N. E. 664

Likewise misleading is Respondents' statement at page 5, paragraph 4, that after the judgment was vacated "the Trustee filed answer and tendered into court the amount claimed to be due on the special assessment." They apparently seek to give the impression that the Trustee *in bankruptcy* did this, whereas it was done by the two co-defendant mortgagees who are referred to in the Circuit Court of Appeals' opinion as "Mortgage Trustees." (R. 182 bottom, Petition 32 bottom). By dropping the word "Mortgage" and the letter "s," Respondents seek to make it appear that the Trustee *in bankruptcy,* who is Hoover's successor in title, obtained a *vacation* of the judgment in the state court, and paid money into the state court, which is entirely erroneous and misleading. (Respondents' brief, page 5, par. 4).

The same erroneous impression is *woven into* Respondents' brief in *three other places,* namely: at the end of their "Question Presented" at page 2, at the end of the top paragraph at page 3, and in next to the last paragraph at page 11.

A-B-C

Cannot make collateral attack on identity of judgment defendant.

Respondents, at pages 7-11, admit our Indiana decisions which forbid going into another court and making a collateral attack on a judgment for matters outside the judgment record.

But then they seek to evade the rule, and to accomplish the same thing indirectly, by making a collateral attack on the *identity* of the judgment defendant. They say they will admit that the state court rendered a *foreclosure* judgment against a *stranger* of like name who never had any interest in the *land*,—which would make the judgment worthless and destroy the title based thereon. This sophistry violates the Indiana Supreme Court decisions cited in our Petition at pages 20-21 which specifically forbid attacking a judgment by showing summons was served on a stranger of like name. It also violates the Indiana decisions at page 28 of our Petition, holding that when a court enters a judgment, such as this foreclosure judgment, there attaches to the judgment a presumption that all the *requisites* of a *valid* judgment exist, and that this presumption is conclusive against collateral attack for matters not apparent on the face of the record.

Here was a state court foreclosure decree which, on its face, was perfectly regular. It purported to do the normal, effective thing of foreclosing against the Hoover who was described in the complaint as claiming an interest in the *land*. (R. 83, 84, clauses 12, 15, 18). It ordered this Hoover's "*right, title and interest* in and to said *real estate*" to be sold, and it saved to this Hoover his "statutory right to redeem." (R. 90, bottom).

For a federal court to take that judgment and distort it into an absurd and worthless thing, by the device of declaring that it *binds only a stranger* to the land, of like name, but does not bind the owner,—and this based on oral testimony in the federal court ten years after the judgment,—is the worst and most dangerous kind of collateral attack and usurpation of power by the federal court against the state court's judgment, and against Petitioner's title based thereon.

Respondents at page 9 attempt no distinction or denial of the Indiana Supreme Court cases which we cited at page 27 to the effect that the *identity* of the *parties* to a judgment *cannot be collaterally attacked* by evidence outside the judgment record.

They merely cite other cases holding that when a question of identity of a person arises *directly* in the *original* case, then a certain rule of *evidence* is applicable, namely: that identity of a name is *prima facie evidence* of identity of person but can be rebutted by other *evidence.* None of the cases cited by Respondents at page 9 involve the present question of *collaterally* attacking a *judgment* by an attempt to dispute the identity of the judgment defendant. Their case of *Aultman, Miller & Co.,* (1883) 93 Ind. 158, 159, 160, holds that in a direct action upon a promissory note, the identity of the man who signed the note can be inquired into. *Schofield* v. *Jennings, Admr.* (1879), 68 Ind. 232, 235, was also an action on a promissory note and lays down the same rule. *Mode* v. *Beasley* (1895), 143 Ind. 306, 333, applies the same rule in determining the identity of voters who signed petition to change the county seat.

Respondents, attempting to show a discrepancy in the "record," say at page 10 that the "chain of title discloses that one Don Hoover, a bachelor of *Jasper* County, Indiana, took title to the real estate by deed," and that

thereafter judgment was rendered against a Don Hoover and wife residing in *Lake* County. The first part of their statement above quoted is untrue. On the contrary, their own exhibited deed shows that Hoover derived title solely by a quit-claim deed running "to Don Hoover of *Lake* County, in the State of Indiana," which contained no recital as to his being a bachelor or as to his marital status. (R. 126). Hence, at the time the state court's foreclosure judgment was entered, there was no discrepancy between the record title of the ownership of the land and the court record showing personal jurisdiction over and personal judgment against the owner.

However, Respondents distort the law by such argument. The "record" referred to in all of the Indiana cases which say that the jurisdictional defect must appear "on the face of the record," means the *court* record in the case where the judgment was rendered,—not the record of some previous deed in the chain of title in the county recorder's office. (Cases in Petition, pages 22, 27).

Nowhere have Respondents been able to show any jurisdictional defect on the face of the state court's record, nor have they been able to meet the Indiana decisions on that subject.

The opinions below do not contend that there is any defect appearing on the face of the state court's record. On the contrary, the District Court based its decision on *oral* testimony taken ten years after the judgment to prove facts *outside* the state court's record, namely: that the owner Hoover was not in fact served with summons but that another person of like name was. (R. 59-72, 133-134). The Circuit Court of Appeals *approved this kind of attack* by reciting these facts which were based upon the oral testimony, and then saying:

"As a result thereof, the *mistake in serveice* was not discovered until long after judgment had been rendered." (Our emphasis).

R. 82 top, Petition 32 top.

The Circuit Court of Appeals' opinion then goes on to hold that this kind of collateral attack by the federal court on the state court's judgment *was proper*, saying in the latter part of its opinion where it lays down the law:

"It is undisputed that Don Hoover of Jasper County, the owner of the real estate in question, was never served with notice of the foreclosure proceedings in the Superior Court of Lake County. • • • Insofar as the grantor Hoover is concerned, the judgment in the Superior Court was *void* and *hence* the proceedings in the District Court *were proper* and are binding upon the intervenor." (Petitioner here).

R. 184-185. Petition, 34-35.

That is the real question decided below. *It is such an unusual and sweeping assertion of a federal court's authority to upset a state court's judgments*, so potent with mischief to Indiana real estate titles, and so contrary to Indiana law, that it needs to be reviewed by this Court.

Wherefore, Petitioner respectfully submits that the petition for certiorari should be granted.

Owen W. Crumpacker,
Jay E. Darlington,
Attorneys for Petitioner.